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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF THE FORMAL  
COMPLAINT OF SWING FIRST  
GOLF LLC AGAINST JOHNSON  
UTILITIES LLC.

DOCKET NO. WS-02987A-08-0049

JOHNSON UTILITIES MOTION TO  
STAY DISCOVERY PENDING  
RULING ON MOTION FOR  
SUMMARY JUDGMENT

*(Expedited Consideration Requested)*

Pursuant to A.A.C. R14-3-106, Johnson Utilities LLC, doing business as Johnson Utilities Company ("Johnson Utilities" or the "Company"), hereby moves for a stay of discovery in the above-captioned matter pending a ruling by the Arizona Corporation Commission ("Commission") on Johnson Utilities' December 4, 2008, Motion for Summary Judgment ("MSJ").

**I. BACKGROUND**

On the February 5, 2008, Swing First Golf LLC ("Swing First Golf" or "SFG") filed an Amended Formal Complaint ("Complaint") against Johnson Utilities. Since the filing of the Complaint and pursuant to the Administrative Law Judge's ("ALJ") March 19, 2008, Procedural Order, both Johnson Utilities and Swing First Golf have engaged in discovery. On December 4, 2008, Johnson Utilities filed the MSJ pursuant to A.A.C. R14-3-106 and Rule 56, Ariz. R. Civ. P. asserting that no issues of material facts are in dispute and that the Complaint should be dismissed as a matter of law. On December 15, 2008, Swing First Golf filed its Response to the MSJ. On December 23, 2008, Johnson Utilities filed its

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1 Reply to SFG's Response. Johnson Utilities has requested oral argument on the  
2 MSJ which is currently pending before the ALJ.

3 On December 29, 2008, Swing First Golf issued its Second Set of Data  
4 Requests ("Second Set") to Johnson Utilities. The Second Set is comprised of 38  
5 questions containing over 100 subparts. Swing First Golf has requested the  
6 Company to provide its responses to the Second Set by January 12, 2009.<sup>1</sup>

7 **II. DISCOVERY SHOULD BE STAYED UNTIL THE**  
8 **COMMISSION RULES ON THE MSJ**

9 The MSJ pending before the Commission is case dispositive. The  
10 Company's MSJ and its Reply demonstrate that no issues of material fact are in  
11 dispute, and, accordingly, the Commission may decide the claims set forth in the  
12 Complaint as a matter of law. SFG has not only issued its Second Set, but in its  
13 Affidavit in Support of Response to the MSJ, asserts that it anticipates several more  
14 rounds of data requests and three depositions.<sup>2</sup> Responding to extensive discovery  
15 requests and attending depositions places an enormous burden on the utility and its  
16 resources and is quite costly. If the Commission were to ultimately grant the MSJ,  
17 the need for additional discovery becomes moot.<sup>3</sup>

18 Swing First Golf filed its Complaint over 11 months ago and has since  
19 issued only two sets of discovery and has not taken any depositions. SFG will not  
20 be prejudiced or harmed in any way if discovery is stayed pending a ruling on the  
21 MSJ. If the MSJ is granted, the Company will not have to waste significant time,

22 <sup>1</sup> On December 31, 2008, the Company notified SFG of its objections to six of the data requests.

23 <sup>2</sup> Affidavit of Craig Marks, page 1, lines 16-17; page 2, lines 1-3.

24 <sup>3</sup>In Docket Nos. E-01575A-08-0358 and E-01773A-0358, *In the Matter of the Formal Complaint*  
25 *of Sulphur Springs Valley Electric Cooperative, Inc. against Arizona Electric Power*  
26 *Cooperative, Inc.*, currently pending before the Commission, discovery and the procedural  
schedule have been stayed pending a ruling on defendant Arizona Electric Power Cooperative,  
Inc.'s motion for summary judgment in which oral argument on the motion was held on  
November 20, 2008.

resources, and money responding to and engaging in, unnecessary discovery. If the MSJ is denied, discovery can simply resume. Even if the MSJ was only partially granted, this would narrow the scope of discovery to the remaining issues.

### III. CONCLUSION

Good cause exists for the Commission to grant this stay as it will not harm or prejudice SFG, while ensuring that the Company's time, resources, and money are not unnecessarily expended. Accordingly, Johnson Utilities requests the ALJ to issue a procedural order staying discovery in this matter pending a ruling on the MSJ.<sup>4</sup>

RESPECTFULLY submitted this 8th day of January, 2009.

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By: 

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ORIGINAL and thirteen (13) copies of the foregoing filed this 8th day of January, 2009, with:

Docket Control  
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COPY of the foregoing hand-delivered this 8th day of January, 2009 to:

Ernest Johnson, Director  
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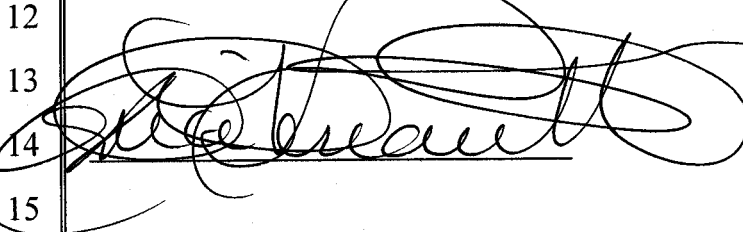
<sup>4</sup> The stay should also include the Company's obligation to respond to the Second Set.

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4 Yvette B. Kinsey, Administrative Law Judge  
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